

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

**THE ESTATE OF ELLEN STARCHER,
BY RENA HUGHES, ADMINISTRATRIX,**

Plaintiff,

v.

**CIVIL ACTION NO. 2:14-27603
(Roane Circuit Court No. 14-C-42)**

**CARROLL CHRISTIANSEN, M.D.
an Individual; and SIREESHA
VEMURI-VIJAYA, M.D., an Individual**

Defendants.

NOTICE OF REMOVAL

Now comes the United States of America ("United States") and pursuant to 28 U.S.C. § 1446, gives notice of the removal of the above-styled action from the Circuit Court of Roane County to the United States District Court at Charleston. As grounds for removal the United States represents as follows:

1. Carroll Christiansen, M.D. and Sireesha Vemuri-Vijayam M.D., employees of Roane County Family Health Care, Inc., are named as defendants in a civil action filed in the Circuit Court of Clay County on or about September 12, 2014. **(Ex. 1)**

2. The complaint alleges, generally, that Carroll Christiansen, M.D. and Sireesha Vemuri-Vijayam M.D., were negligent in their care and treatment of Ellen Starcher by failing to send Ms. Starcher for a CT scan of her head after a fall resulted in the injury to her head. Said fall allegedly caused an intracranial hemorrhage and resulted in Ms. Starcher's death. **(Ex. 1)**

3. At all times relevant to the complaint, Roane County Family Health Center, Inc. was "deemed" an employee of the United States for purposes of the Public Health Service

("PHS") Act, 42 U.S.C § 233(h), as amended by the Federally Supported Health Centers Assistance Act ("FSHCAA").¹ (Ex. 2)²

4. The Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346(b), 2671-2680, provides the exclusive remedy for alleged negligence claims for medical and related services performed by employees of deemed entities and the deemed entities while acting in the scope of their respective employment. 42 U.S.C. § 233(a).

5. The Attorney General, acting through his designee, the United States Attorney for the Southern District of West Virginia, has certified that the actions of Carroll Christiansen, M.D. and Vemuri-Vijaya, M.D., as employees of Roane County Family Health Care, Inc., as set forth in the complaint were within the scope of their employment. (Ex. 3)

6. Upon said certification, this action is properly removed, without bond, any time before trial, to the United States District Court for the district and division in which the action is pending. 42 U.S.C. § 233(c).

7. The removal of this civil action is properly effected by the filing of a notice of removal in the district court. 28 U.S.C. § 1446.

8. A copy of the Roane County Circuit Court docket sheet relating to this action is attached. (Ex. 4)

¹ Roane County Family Health Care became eligible for FTCA coverage pursuant to the FSHCAA on January 1, 2011, January 1, 2012 and January 1, 2013.

² See also, <http://findahealthcenter.hrsa.gov> Webpages from government websites are self authenticating and meet the requirements for admissibility pursuant to Fed. R. Evid. 803(8). Williams v. Long, 585 F. Supp. 2d 679, 685-91 (D. Md. 2008)

WHEREFORE, based upon the foregoing, the United States respectfully submits that this action is properly removed from the Circuit Court of Roane County, West Virginia, to the United States District Court at Charleston.

Respectfully submitted,

R. BOOTH GOODWIN II
United States Attorney


s/Stephen M. Horn

Assistant United States Attorney

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CERTIFICATE OF SERVICE

I, STEPHEN M. HORN, Assistant United States Attorney for the Southern District of West Virginia, hereby certifies that service of the **NOTICE OF REMOVAL** was made this 5th day of November, 2014 by mailing a true copy through the United States mail, postage prepaid, to the following:

Charles M. Love, IV
The Love Law Firm, PLLC
405 Capitol Street, Suite 309
Charleston, WV 25301

Marvin W. Masters
The Masters Law Firm, Inc.
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STEPHEN M. HORN
Assistant United States Attorney

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